

JUDGE BAER
 UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

14 CV 1031

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 CONOR OBERST

Plaintiff,

-against-

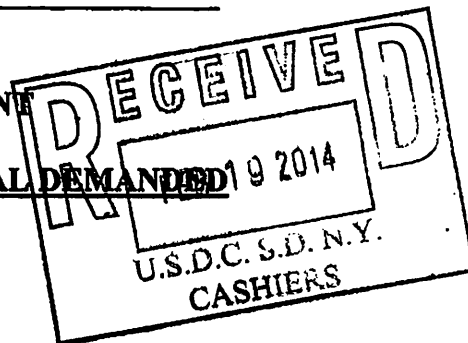
JOANIE FAIRCLOTH

Defendants.
 -----X

Case No. _____

COMPLAINT

JURY TRIAL DEMAND



Plaintiff Conor Oberst ("Oberst"), by and through his attorneys, Lavelly & Singer Professional Corporation, for his Complaint against Defendant Joanie Faircloth ("Faircloth"), alleges as follows:

NATURE OF THE CASE

1. This action arises out of despicable, outrageous, false, and defamatory statements that Faircloth made about Oberst. Faircloth is a pathological liar with a well-documented history of spinning tales and fabricating sexually-themed stories about others to benefit herself. While Faircloth has thus far been able to avoid the consequences of her malicious actions, the time has now come for a reckoning of her illegal and immoral conduct.

2. In three separate comments posted on the website xojane.com on or around December 17, 2013, Faircloth falsely and outrageously asserted that she had been raped by Oberst more than 10 years prior. Faircloth's inherently damaging and vile allegations about Oberst are vicious lies.

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3. Although Faircloth's defamatory claims have no factual basis whatsoever, they have spread like wildfire across the media in New York and elsewhere, causing substantial harm to Oberst's reputation as a respected musician and individual of high moral character.

4. Oberst has rightfully demanded that Faircloth recant her allegations, but she refuses to admit that she lied and will not voluntarily retract her libelous statements. Instead, Faircloth has further defamed Oberst by outrageously asserting new lies, telling numerous individuals that Oberst's representatives offered her "hush money" to remain quiet about the fabricated rape claim.

5. Faircloth's defamatory statements about Oberst are not only malicious lies, but they are an insult to the millions of *actual* rape victims around the world. Faircloth should be ashamed of herself. Oberst brings this action to clear his name and set the record straight.

THE PARTIES

6. Oberst is an accomplished singer-songwriter best known for his work with the band Bright Eyes. Oberst has enjoyed a reputation as a prolific, critically-acclaimed, and fan-adored artist. His name has now been tarnished by Faircloth's outrageous and libelous claims. Oberst, a citizen of Nebraska, regularly transacts business in New York and spends at least one-third of every year living and working in New York City. Oberst derives a substantial percentage of his annual income from his business dealings with music publishing companies headquartered in New York City. There have been countless articles written about Oberst over the last few years that have specifically noted his presence in New York, and the fact that he lives and works in New York City on a regular basis.

7. Oberst is informed and believes that Faircloth is, and at all times relevant hereto was, a citizen of North Carolina. On well-researched information and belief, Faircloth is a

pathological liar who, among other acts, has previously portrayed herself falsely as a boy named “Zac” (before killing that “character” off in a fictitious suicide), as well as passing herself off as a purported cancer patient.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this action based on diversity of citizenship pursuant to 28 U.S.C. §1332(a).

9. Venue is proper pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Oberst’s claims arose in this district, Oberst has incurred harm in this district as a result of Faircloth’s tortious conduct, and Faircloth expressly aimed her tortious conduct at this district.

FACTUAL ALLEGATIONS

Faircloth’s False and Defamatory Statements about Oberst

10. On or about December 17, 2013, an article appeared on the website xojane.com entitled “IT HAPPENED TO ME: I Dated a Famous Rock Star & All I Got Was Punched in the Face.” Oberst is informed and believes and based thereon alleges that xojane.com is headquartered in New York City. Beginning on December 19, 2013, and continuing over the next few days, Oberst is informed and believes and based thereon alleges that Faircloth posted the following three statements (the “XOJane Statements”) in the “comments” section of the article:

STATEMENT 1:

I was raped by a “rock star” myself. I was 16 years old, he was in his 20s. No one believed me (he wasn’t even that famous then). No one believed me because I had been his biggest fan for several years at that point, his pictures covered my

locker, etc. I guess when I made the accusation, everyone thought it was some sick & twisted way to get... I don't know, closer to him? My own mother didn't believe me until recently and it's 10 years later now. This guy is the poster boy for what was known as "emo" back in the day, everyone thinks he's so sweet and sensitive and sad, that he could never be the vicious monster he was that night. It makes me sick. I want to out him so bad. Every time I hear his name, I want to tell people what he did. I think people deserve to know. But due to how shit went down with my own friends & family at the time of the assault, the backlash terrifies me. It hurts to constantly see the way people fawn over him as if he's a God. It's really hard dealing with your attacker being famous or popular when you know the truth about them but feel no one will listen.

STATEMENT 2:

I am not the author but as I said in a previous comment, I was raped by a "rock star" when I was 16 years old and he was in his 20s. My husband suggests I may feel some empowerment by outing my rapist. It was Conor Oberst of Bright Eyes (and several other bands/side projects he fronts, bright eyes being the most popular). I hope you are right about helping the next girl but I'm waiting for the backlash.

STATEMENT 3:

It was especially traumatizing because the way I became to know him is because his older brother was my 7th & 8th grade english teacher. His older brother is an amazing guy, a total sweetheart who helped me through some awful, awful times in my early teen years. He continued to be sort of a big brother mentor type to me

throughout high school. I became a huge fan of Conor's music and for my 16th birthday, Bright Eyes was playing a local show and my old english teacher (Conor's brother) arranged for me to go and meet Conor after the show as a birthday present of sorts. Conor definitely took advantage of my teenage crush on him. At first, I was flattered when he was playing with my hair and had his hand on my leg. It was like my dream come true at that point. But then he clearly wanted to go further and I made it very clear and told him I was a virgin and wasn't prepared to change that right then but he didn't stop. It was a really fucked up way to realize that people you idolize and look up to so much can be shitty, terrible people. I lost touch with my old english teacher shortly after that incident because of what happened. I didn't feel comfortable telling him what his brother had done to me and wasn't confident that he would even believe me anyway. Conor took a lot from me including my virginity, my dignity and self esteem but also the only "father figure" and man I had ever really fully trusted I regret not telling his brother about it now that I'm older because when I look back on things, in hindsight I can see that his brother kind of thought he was a jerk and wasn't very fond of him and he probably would've believed me and been a supportive adult for me to lean on in that situation.

11. Faircloth's allegations of sexual assault by Oberst in the XOJane Statements are **categorically false** and defamatory. In reality, Oberst never had any personal relationship with Faircloth—sexual or otherwise. Faircloth may have attended certain of Oberst's early musical performances, but she was nothing more than a fan. In fact, at the show referenced in the XOJane Statements, Oberst was constantly in the company of his band members, his brother, or

his girlfriend at that time. Similarly, Oberst is informed and believes and based thereon alleges that Faircloth herself was at all times accompanied at the show by a group of her girlfriends.

12. Notably, Faircloth's own contradictory admissions further demonstrate the falsity of the XOJane Statements. For example:

- In a January 31, 2013 posting on Facebook, Faircloth wrote: "The last time I saw [Oberst's band] perform at the Cat's Cradle, it was my 16th birthday and [Oberst] pulled me up on stage and sang happy birthday. *Best memory ever!*"
- On December 7, 2011, Faircloth posted on Facebook that Bright Eyes was her favorite band.
- On December 3, 2011 Faircloth posted on Facebook that the only way she could get her son to fall asleep was by playing songs from Oberst's band Bright Eyes to him.

13. None of the aforementioned admissions by Faircloth would make sense if Oberst had raped Faircloth, as she falsely and maliciously alleges in the XOJane Statements.

14. In addition to the false and defamatory XOJane Statements, Oberst is informed and believes and based thereon alleges that Faircloth posted similar statements on a blog xojanecommenter.tumblr.com (the "Tumblr Statements"). Although that blog has since been taken down, the Tumblr Statements have nevertheless been republished and referenced at length by numerous media outlets.

15. Oberst is also informed and believes and based thereon alleges that Faircloth recently stated to multiple individuals that Oberst's attorneys had offered her "hush money" to stay quiet about her allegations of sexual assault (the "Hush Money Statements")—a further lie

and clear evidence of Faircloth's intent to damage Oberst's reputation in New York and elsewhere.

16. After Faircloth made these defamatory statements, they were republished by countless media outlets around the world, thus further perpetuating the untrue depiction of Oberst as a rapist. To add insult to injury, certain media outlets published stories in which Faircloth's defamatory false statements were characterized as true, and in which Oberst's fans were actually encouraged to stop supporting his musical career.

17. Oberst alleges on information and belief that Faircloth made all of the above-described defamatory statements with knowledge of their falsity, and knowing and intending that they would be published and disseminated in the media in New York and elsewhere, and that the statements, which were false, fabricated and defamatory, offensively depicted Oberst as a sexual predator who takes advantage of his fans.

18. Oberst is informed and believes and based thereon alleges that Faircloth made all of the above-described statements with the intent of hurting Oberst's reputation in New York and elsewhere, to harm his standing in the community and entertainment industry, to damage his name, and to cause shame, mortification, hurt feelings, embarrassment and humiliation.

19. Oberst alleges on information and belief that, at the time Faircloth made the above-described defamatory statements, she was aware that the statements were false, knowing that her assertions of rape were lies, and knowing that Oberst never, in fact, had any personal relationship with her, sexual or otherwise. Oberst further alleges on information and belief that, notwithstanding Faircloth's knowledge that the statements were false, she published them to third parties knowing and intending that they would be further published and disseminated in New York and elsewhere. Thus, in making the statements, Faircloth acted with malice.

20. Oberst has, on two separate occasions, demanded that Faircloth recant the false statements she made about him, but Faircloth has thus far refused to do so. Accordingly, Oberst has been forced to file this suit against Faircloth in order to set the record straight and to clear his name.

COUNT I

LIBEL

21. Oberst repeats and realleges the allegations set forth in Paragraphs 1 through 20, inclusive, as if fully set forth herein.

22. The XOJane Statements, Tumblr Statements, and Hush Money Statements are not privileged, and are false and defamatory. Oberst alleges on information and belief that the XOJane Statements, Tumblr Statements, and Hush Money Statements were intended by Faircloth to directly injure Oberst with respect to his professional reputation, character, trade and business, in New York and elsewhere.

23. The XOJane Statements, Tumblr Statements, and Hush Money Statements were and are libelous *per se* because they falsely, maliciously and recklessly portray Oberst as engaging in criminal conduct by (1) sexually assaulting Faircloth; and (2) committing the sexual assault at a time when Faircloth was only 16 years old. The XOJane Statements, Tumblr Statements, and Hush Money Statements are susceptible of a defamatory meaning on their face in that they have a direct tendency to injure Oberst with respect to his reputation, character, trade and business.

24. Oberst alleges on information and belief that at the time Faircloth made the XOJane Statements, Tumblr Statements, and Hush Money Statements, she knew that the statements were false or had no reasonable grounds for believing them to be true. Oberst is

informed and believes and based thereon alleges that the XOJane Statements, Tumblr Statements, and Hush Money Statements were disseminated recklessly and with actual malice, with the knowledge that they were false, or with a reckless disregard for the truth.

25. The XOJane Statements, Tumblr Statements, and Hush Money Statements expose Oberst to hatred, contempt, ridicule and obloquy, and/or cause him to be shunned or avoided and have a tendency to injure him in his occupation in New York and elsewhere.

26. Oberst alleges on information and belief that Faircloth published and disseminated the false XOJane Statements, Tumblr Statements, and Hush Money Statements to third parties, including to members of the media based in New York and elsewhere, who were in a position to widely disseminate the false XOJane Statements, Tumblr Statements, and Hush Money Statements via the print and electronic media in a manner that could foreseeably result in the XOJane Statements, Tumblr Statements, and Hush Money Statements being further communicated to other innumerable third parties as well.

27. As a direct and proximate result of the above-described conduct by Faircloth, Oberst has suffered general and special damages in an amount not presently known to Oberst but believed to be not less than \$1 million, including damage to Oberst's reputation and standing in the community, shame, mortification, hurt feelings, embarrassment, and humiliation.

28. Oberst is informed and believes and based thereon alleges that the aforesaid acts of Faircloth were done intentionally or with a conscious disregard of Oberst's rights, and with an intent to vex, injure or annoy Oberst, such as to constitute oppression, fraud or malice, thus entitling him to exemplary and punitive damages in an amount appropriate to punish or set an example of Faircloth and to deter such conduct in the future, which amount will be proved at trial.

PRAYER FOR RELIEF

WHEREFORE, Oberst respectfully demands judgment in his favor as follows:

1. On the First Count, for general, special, punitive, and exemplary damages from Faircloth, in an amount to be determined at the time of trial, but believed to be not less than \$1 million.
2. On the First Count, for recovery of reasonable attorneys' fees and costs in connection with this suit.
3. For such further and other relief as this Court deems just and proper.

JURY DEMAND

Plaintiff demands a jury trial in this action on all issues and claims triable to a jury.

Dated: Los Angeles, California
February 18, 2014

By:

LAVELY & SINGER
PROFESSIONAL CORPORATION

Andrew B. Brettler (AB2662)
Martin D. Singer

(pro hac vice application to be filed)

David B. Jonelis

(pro hac vice application to be filed)

2049 Century Park East, Suite 2400

Los Angeles, California 90067

Telephone: (310) 556-3501

Facsimile: (310) 556-3615

Email: abrettler@lavelysinger.com

Attorneys for Plaintiff Conor Oberst